

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTOINE DAVIS, } Civil No. 08cv2100 JAH (RBB)
Petitioner, }
v. } **ORDER DENYING MOTION FOR
M.A. SMELOSKY, Warden } CERTIFICATE OF APPEALABILITY**
Respondent. }

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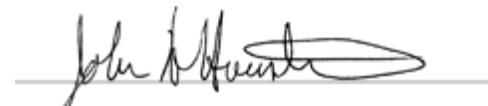
On November 11, 2008, Petitioner, appearing *pro se* filed a motion for enlargement of time to file petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ This Court denied the motion without prejudice upon finding the Court is without jurisdiction to extend the one-year statute or limitations of 28 U.S.C. § 2244(d)(1)(A)-(D). On December 8, 2008, Petitioner filed a notice of appeal (Doc. No. 3) and motion for a certificate of appealability (Doc. No. 4).

A certificate of appealability is authorized “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this threshold showing, a petitioner must show : (1) the issues are debatable among jurists of reason; or (2) that a court could resolve the issues in a different manner; or (3) that the questions are adequate to deserve encouragement to proceed further. Lambright v. Stewart, 220 F.3d 1022, 1024-25 (9th Cir. 2000)(citing Slack v. McDaniel, 529 U.S. 473 (2000) and Barefoot v. Estelle, 463 U.S. 880 (1983)).

¹Petitioner had not filed a petition for writ of habeas corpus.

1 Petitioner seeks to appeal the Court's denial of the motion for enlargement of time.
2 He maintains the ruling was erroneous, because he is entitled to a finding of an
3 impediment under section 2244(d)(1)(B) or equitable tolling. This Court finds that a
4 certificate of appealability is not warranted in this instance because the denial of the
5 motion for enlargement of time to file a petition for writ of habeas corpus under the
6 circumstances is not an issue debatable among jurists of reason nor could any other court
7 resolve the issue in a different manner. Lambright, 220 F.3d at 1024-25. Accordingly,
8 this Court **DENIES** Petitioner's motion for a certificate of appealability.

9 DATED: December 10, 2008

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11 JOHN A. HOUSTON
12 United States District Judge

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